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09/779,169	02/08/2001	Eric P. Orgeron	A99274US (98062.3)	6510

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EXAMINER

PIASCIK, SUSAN L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/779,169

Applicant(s)

ORGERON ET AL.

Examiner

Susan L Piascik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9,18-24 and 26-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,18-24 and 26-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments submitted in the Appeal Brief, filed April 15, 2003, with respect to claims 9, 18-24 and 26-40, have been fully considered. Upon further review, the finality of the rejection, dated October 2, 2002, has been withdrawn.

The rejections regarding claims 9, 29-30, and 36-38 have been modified to include a new reference. The Applicant's argument in regards to the Preston reference failing to teach a "float" has been found persuasive and the 102 rejection has been withdrawn.

However, the Examiner continues to argue that the Brokaw reference does teach a weighted tubular member in the head section of the lure body. The tubular member of Brokaw has a particular weight associated with the structure, and can therefore be considered "weighted." Further, Brokaw also anticipates the newly claimed limitation of "whiskers". Brokaw specifically states that the lure can simulate "live bait, such as hellgrammites, minnows, crawfish, shrimp, frogs, etc.," which leads the Examiner to believe that in order to create a life-like simulation, "whiskers" would be included on the artificial lure.

In conclusion, the Examiner maintains that the Applicant's invention would have been obvious to one having ordinary skill in the art at the time of the invention, given the prior art of record. Please see the modified rejections below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

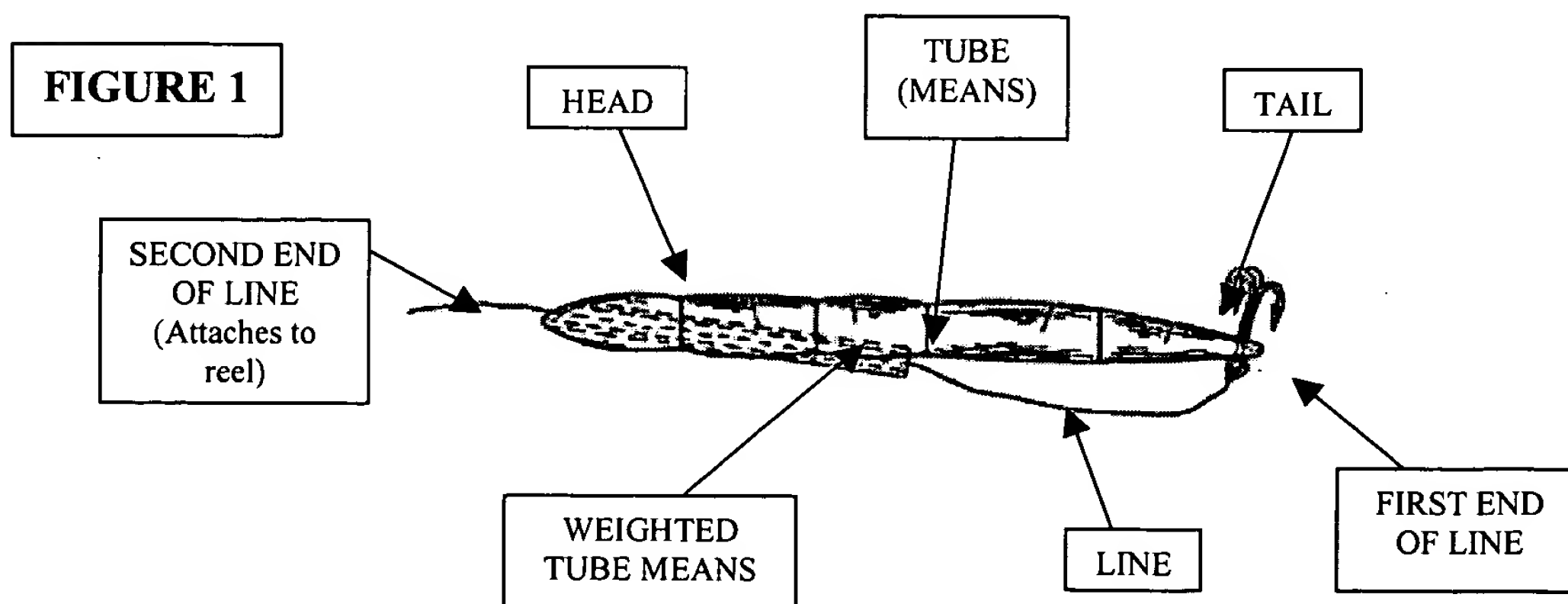
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18-24, 26-27, and 31-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brokaw.

In regards to **claim 18**, Brokaw teaches a fishing lure (2c) for use in water with a fishing line comprising an artificial bait body (unnumbered) having a tail (10) and a weighted tube means (50) in the body for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the tube means (50) and for causing the artificial bait body to be at a level position in the water while hanging on a fishing line.

See Figure 1 below.



Regarding **claim 19**, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial bait body (unnumbered) through the weighted tube means (50).

In regards to **claim 20**, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) has a head (8). The lure (2c) also has a weighted tube means (50) in the artificial bait body (unnumbered) positioned forward of the tail (10), generally in between the head (8) and the tail (10). The lure further comprises a flexible fishing line (14) or leader having first and second ends (unnumbered). The first end of the fishing line (14) is attached to the tail (10) of the artificial bait body (unnumbered) and the line (14) passes through the weighted tube means (50) wherein the second end of the fishing line (14) is connected to a fishing reel or to a length of fishing line wound upon a reel. See Figure 2 above.

Regarding **claim 21**, Brokaw discloses a fishing lure (2c) wherein the line (14) is a section of leader that has first and second ends (unnumbered). The first end is attached to the tail (10) of the lure and the second end defines a point of attachment for attaching a user's rod or reel thereto.

In regards to **claim 22**, Brokaw discloses a fishing lure (2c) further comprising a hook (24) attached to the lure body (unnumbered).

Regarding **claim 23**, Brokaw discloses a fishing lure further comprising a hook (24) attached to the line (14).

In regards to **claim 24**, Brokaw discloses a method of fishing using the lure (2c) of claim 18 to catch fish (see col 3, lines 49-75).

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Regarding **claim 26**, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34).

In regards to **claim 27**, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body through the tube means (unnumbered).

In regards to **claim 31**, Brokaw teaches a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34) and the tube means (unnumbered) is a tube for allowing a line (14) to pass from the tail (10) of the artificial shrimp body through the tube (unnumbered). See Figure 2 above.

Regarding **claim 32**, Brokaw discloses a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body through the tube (unnumbered).

In regards to **claim 33**, Brokaw discloses a fishing lure (2c) wherein the artificial bait body (unnumbered) is an artificial shrimp body (see col 1, lines 30-34) and includes whiskers.

Regarding **claim 34**, Brokaw teaches a fishing lure (2c) further comprising a line (14) passing from the tail (10) of the artificial shrimp body (unnumbered) through the tube means (unnumbered).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinchen, Sr. in view of Preston.

In regards to **claim 9**, Kinchen, Sr. teaches a float (10) slidably received on a rod (8). Kinchen, Sr. teaches a spring means to impart motion to the float (10) instead of magnets. However, Preston teaches a fishing apparatus having a first magnet (14) and a second magnet (24), aligned in such a manner that they repel one another. Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to modify the float, taught by Kinchen, Sr., to include magnets in lieu of a spring, as taught by Preston, in order to construct a long-lasting float capable of imparting life-like motion to a fishing lure.

Claims 28, 35 and 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brokaw in view of Preston.

In regards to **claim 28**, Brokaw discloses a fishing lure (2c) comprising an artificial bait body having a tail (10) and an opening (50) in the body for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the opening (50). However, Brokaw fails to disclose a sound-making means for making a slapping or clicking noise in order to accurately simulate a live shrimp. U.S. Patent No. 5,924,236, given to Preston, does teach a lure (10) comprising a sound-making means for making a sound similar to the slapping or clicking noise that a live shrimp makes when the tail section of the live shrimp makes contact with its body section. Therefore, it

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would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, in order to make the fishing lure more realistic and attractive to fish species.

In regards to **claim 35**, Brokaw discloses a fishing lure (2c) that has an artificial body resembling a live shrimp body. However, Brokaw fails to disclose a sound-making means for making a slapping or clicking noise in order to accurately simulate a live shrimp. U.S. Patent No. 5,924,236, given to Preston, does teach a lure (10) comprising a sound-making means for making a sound similar to the slapping or clicking noise that a live shrimp makes when the tail section of the live shrimp makes contact with its body section. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, in order to make the shrimp lure more realistic and attractive to fish species.

In regards to **claim 39**, Brokaw, as modified in claim 28, teaches a fishing lure (2c) further comprising a tube means (unnumbered) in the opening (50) for allowing a line (14) to pass from the tail (10) of the artificial bait body (unnumbered) through the tube means (unnumbered). See Figure 2 above.

In regards to **claim 40**, Brokaw, as modified, teaches a fishing lure (2c) further comprising a line (14) passing from tail (10) of the artificial bait body (unnumbered) through the tube means (unnumbered). See Figure 2 above.

Claims 29-30 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brokaw in view of Preston and further in view of Kinchen, Sr.



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In regards to **claim 29**, Brokaw, as modified in the previous claim by Preston, teaches a lure wherein the sound-making means comprises a lure (11) having a magnet (24) thereon. Neither reference teaches a float having a sound-producing means. However, Kinchen, Sr. teaches a float having sound producing beads (B) and a spring mechanism. The spring mechanism of the float is an art-recognized equivalent to the magnets used in the fishing lure, described by Preston. Each mechanism imparts motion to the apparatus in order to bring two objects together to create a clicking sound. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, modified by Kinchen, Sr., in order to make the fishing lure more realistic and attractive to fish species.

Regarding **claim 30**, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float means (10- Kinchen, Sr.) slidably received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 -Preston) attached to the float means and a second magnet (14 -Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

In regards to **claim 36**, Brokaw, as modified in the previous claim by Preston, teaches a lure wherein the sound-making means comprises a lure (11) having a magnet (24) thereon. Neither reference teaches a float having a sound-producing means. However, Kinchen, Sr. teaches a float having sound producing beads (B) and a spring mechanism. The spring mechanism of the float is an art-recognized equivalent to the magnets used in the fishing lure, described by Preston. Each mechanism imparts motion

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to the apparatus in order to bring two objects together to create a clicking sound.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the lure disclosed by Brokaw, to include the sound-making means, taught by Preston, modified by Kinchen, Sr., in order to make the fishing lure more realistic and attractive to fish species.

Regarding **claim 37**, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float means (10- Kinchen, Sr.) slidably received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 -Preston) attached to the float means and a second magnet (14 -Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

Regarding **claim 38**, Brokaw as modified by Preston and Kinchen, Sr., teaches a fishing lure wherein the sound-making means comprises a float (10- Kinchen, Sr.) slidably received on a rod means (8 - Kinchen, Sr.). The sound-making means also comprises a first magnet (24 -Preston) attached to the float means and a second magnet (14 -Preston) attached to the rod means (16). The first (24) and second (14) magnets are aligned such that they repel one another.

#### ***Citation of Relevant Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of art with respect to fishing lures:

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U.S. Pat. No. 1,982,573 to Coyne

U.S. Pat. No. 3,990,172 to Hagquist

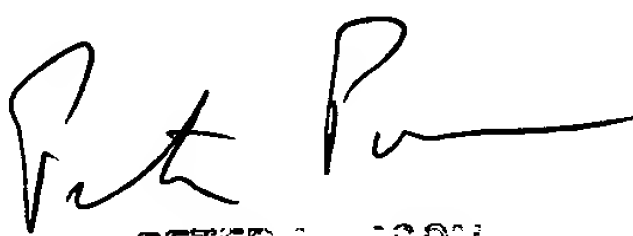
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan L Piascik whose telephone number is (703)305-0299. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703)308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-7687.

slp  
July 28, 2003

  
PETER POON  
SUPERVISOR EXAMINER  
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